

P-443/EM-91-234 ORDER APPROVING PREFERRED SERVICE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the
Introduction of Preferred
Service by MCI

ISSUE DATE: October 9, 1992

DOCKET NO. P-443/EM-91-234

ORDER APPROVING PREFERRED
SERVICE

PROCEDURAL HISTORY

I. Proceedings to Date

On March 31, 1991 MCI Telecommunications Corporation (MCI or the Company) filed a proposal to introduce Preferred Service to its Minnesota customers. Preferred service is a package of telecommunications services aimed at the multi-site business customer. The package includes standard long distance service, operator services, conference call service, and calling card service, all at discounted rates. Preferred service also includes a 10% discount to all calls to the area code for which the customer incurs the highest toll charges during the monthly billing period.

The Department of Public Service (the Department) examined the filing and filed its report on April 30, 1992. The Department claimed area code-specific discounts violated the statutory prohibition against geographic deaveraging and recommended disapproving that portion of the filing. Minn. Stat. § 237.60, subd. 3 (1990).

MCI filed a response on May 14, 1992. On August 25, 1992 the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed comments supporting the Company and opposing the Department's interpretation of the statute. The Company's proposal went into effect under applicable statutory time lines, subject to continuing Commission review.

The matter came before the Commission on September 22, 1992.

FINDINGS AND CONCLUSIONS

II. Legal and Factual Background

A. The Discount Plan

The discount pricing plan at issue provides a 10% discount on all calls placed to the area code for which the customer incurs the highest toll charges during the monthly billing period. The area code to which the discount applies is determined each month on the basis of that month's calling patterns. The discount is offered to all customers throughout the state, and applies to any area code in the state. The pricing plan is aimed at business customers with multiple locations.

B. The Statute

The language of the statutory prohibition against geographic deaveraging reads as follows:

Discrimination. The rates of a telephone company must be the same in all geographic locations of the state unless for good cause the commission approves different rates. A company that offers long-distance services shall charge uniform rates and charges on all long-distance routes and in all geographic areas in the state where it offers the services. However, a company may offer or provide volume discounts in connection with intrastate long-distance services and may pass through any state, municipal, or local taxes in the specific geographic areas from which the taxes originate. . . .

Minn. Stat. § 237.60, subd. 3 (1990).

III. Commission Action

The Department contends that applying a discount to calls to specific area codes, even if the identity of those area codes is determined by an individual customer's calling patterns, is prohibited under the geographic deaveraging statute. The Commission disagrees, finding the plan violates neither the statutory language nor its underlying intent.

A. The Statutory Language

The language of the statute requires that long distance carriers charge uniform rates on all routes and in all areas of the state. MCI meets both these requirements. The Company offers the same rate schedule, including the 10% discount plan, to customers throughout the state. The rate schedule sets uniform rates for all routes, using identical price components (time of day, duration of call) at identical values. The 10% discount plan is

applicable to calls to and from any area code in the state. In short, MCI's rate schedule does not violate the statute on its face.

At the same time, the Department correctly points out that the plan does result in calls on certain routes being billed at lower rates than calls on other routes. The question is whether this is the kind of rate differential the statute intends to prohibit. The Commission believes it is not, for two reasons. First, the discount plan does not run afoul of the purpose of the geographic deaveraging statute, which is to ensure that non-metropolitan Minnesotans share in the benefits of interexchange carrier competition. Second, the discount plan is in reality a volume discount, which the statute explicitly permits. Each issue will be addressed in turn.

B. The Purpose of the Statute

The Commission has a longstanding policy against geographically deaveraged long distance rates. The policy was first articulated in 1985 in the docket in which the Commission authorized intrastate long distance competition. One of the conditions the Commission placed on the development of competition was a prohibition against different per-mile charges for different long distance routes. The goal was to protect subscribers on low traffic, high cost routes (chiefly, non-metropolitan routes) from being priced out of the new, competitive telecommunications market. In the Matter of a Consolidated Proceeding to Investigate Services Within the State of Minnesota, Docket No. P-442, P-443, P-444, P-421, P-433/NA-84-212, Order of October 15, 1985, at 21-22.

The legislature codified the Commission's deaveraging policy in 1987 amendments to the telecommunications statute. In a 1988 complaint proceeding the Commission explained the reasons for its policy and that legislation as follows:

The Commission recognizes that costs for routes originating in Alexandria are higher than costs for routes originating elsewhere in ABT's service area. It is precisely because of such cost differentials, however, that the policy against geographical deaveraging evolved. The Commission, and the Legislature, were concerned that competition in the long distance market not work to the disadvantage of customers on low traffic or high cost routes. Requiring averaged rates was seen as a vehicle for ensuring that the benefits of competition reached all Minnesota customers. The Commission continues to believe that averaged rates are necessary to ensure that residents of all parts of the state share in the economic and social opportunities resulting from recent and continuing changes in telecommunications technology and the telecommunications industry.

ORDER DENYING GOOD CAUSE EXEMPTION AND REQUIRING
ELIMINATION OF DEAVERAGING FROM RATE SCHEDULE BY
APRIL 20, 1989, In the Matter of the Petition of the
Office of the Attorney General for an Order Concerning
Geographically Deaveraged Long-Distance Rates
(April 12, 1989), at 2.

The purpose of the geographic deaveraging statute would not be served by striking down the discount plan at issue. The discount is not linked to the Company's costs of serving particular routes, will not give favorable rate treatment to low cost routes, and will not work to the disadvantage of non-metropolitan Minnesota. The Commission concludes the discount plan does not conflict with the purpose of the geographic deaveraging statute.

C. The Plan as Volume Discount

The geographic deaveraging statute makes it clear that volume discounts are permissible and do not result in geographically deaveraged rates. The Commission believes that the discount plan at issue is a variant of the volume discount and is therefore permissible under the statute.

Competition in the long distance market, in response to consumer demand, has produced a spate of innovative pricing plans, most of them based on calling volume. The classic volume discount was the first to appear. Under a classic volume discount plan, customers pay reduced rates on calls made after they incur total monthly charges over a certain threshold. Later, companies began offering plans which allowed customers to tailor discounts to meet their individual needs. They could, for example, pay a flat, discounted rate for a predetermined number of minutes of use on specified days of the week between specified hours. Later, companies began offering discounts on calls to customer-designated numbers, generally those of friends, relatives, or business associates.

The 10% discount at issue is another of these individualized discount plans. The theory behind the plan is that it allows businesses to reduce their telecommunications costs where they need it most with a minimum investment of time and effort. The Company reports that the plan is one of its most popular, suggesting that it does meet the perceived needs of business customers.

All discount plans have geographic elements, of course, and cause geographic deaveraging in the purest sense. They all result in otherwise identical calls to different endpoints being billed at different rates. Under the classic volume discount, identical calls to different endpoints are billed at different rates depending upon whether they are made before or after the customer's bill reaches the discount level. What triggers the discount, though, is not geography but total usage.

The same thing is true of individualized discount plans, such as those providing discounts to customer-designated numbers or to frequently called area codes. They have a geographical element, since the call's endpoint determines whether or not the discount applies. In both cases, though, geography is incidental; the actual principle of selection is calling frequency. The Commission concludes that such plans are essentially volume discounts and are permissible under the statute.

D. Conclusion

The Commission concludes that the 10% discount plan does not violate the meaning or purpose of the geographic deaveraging prohibition of Minn. Stat. § 237.60, subd. 3 (1990). The Commission will not take action to prohibit the 10% discount.

ORDER

1. The Commission finds that the 10% discount plan challenged by the Department does not constitute geographic deaveraging under Minn. Stat. § 237.60, subd. 3 (1990).
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)